LAW SCHOOL—DEATH OF JOHN LISLE—On June 20th last, John Lisle, Esq., a graduate of the Law School, lost his life at Chelsea, New Jersey, in an effort to save another from drowning. Mr. Lisle had, since his graduation from the Law Department in 1910, not only practised actively and with growing success, but had written on legal subjects and done some excellent translation of legal works in other languages. Mr. Lisle had been requested to deliver a course of lectures this autumn in the Auxiliary Course of the Law School. His pleasant and courteous manner, his sterling character, and the great promise which he gave as a lawyer and writer, make his loss one which the Alumni of the School and its Faculty feel most deeply.

CONSTITUTIONAL LAW—SEGREGATION ORDINANCE—The efforts of municipalities to prevent conflict and ill-feeling between the white and colored races, by legislation providing for residential restrictions on either or both races, has not always met with the approval of State courts of last resort. The Baltimore, Winston and Atlanta ordinances[1] all were held unconstitutional, but the race segregation ordinance of the city of Louisville has triumphed.[2] By imposing identical restrictions as to the alienation of property in white or black blocks, by excepting buildings occupied prior to the adoption of the ordinance, the pitfalls of constitutional prohibition were avoided. So far as we have been able to learn, municipal segregation ordinances have been passed upon by the appellate courts of but four States.

The municipal segregation ordinance enacted by the City Council of Baltimore and passed upon by the Maryland Court of Appeals in *State* v. *Gurry*,[3] simply prohibited a white person from moving into a block inhabited solely by colored persons and prohibited colored persons from moving into a block inhabited solely by whites. Unlike the Louisville ordinance, it contained no reservation in protection of vested rights existing at the time of the enactment of the ordinance. The Louisville ordinance provided that "Nothing herein contained shall be construed to prevent any person who, at the date of the passage of this ordinance, shall have acquired, or possessed the right to occupy any building as a residence, place of abode, or place of assembly from exercising such right." Upon a consideration of the ordinance enacted in Baltimore, the Maryland court held that the attempted exercise of the police power was of such char-

[1] State v. Gurry, 121 Md. 534 (1913); State v. Darnell, 166 N. C. 300 (1914); Carey v. City of Atlanta, 84 S. E. Rep. 456 (Ga. 1915).

[2] Harris v. City of Louisville, 177 S. W. Rep. 472 (Ky. 1915).

[3] State v. Gurry, 121 Md. 534 (1913).

acter as to preclude the court from assuming that the legislature intended to confer on the municipality the power to affect vested rights in the manner sought by the ordinance.

The municipal legislature of the city of Winston, North Carolina, adopted a segregation ordinance which was passed upon by the Supreme Court of North Carolina in the case of *State* v. *Darnell*.[4] The ordinance, like the Baltimore ordinance, contained no saving provision in protection of vested rights existing at the time of the adoption of the ordinance. The opinion is notable in that the court seems to have been impressed by the time-worn sophistry that, if the power exist to segregate white and blacks, then the power must likewise exist to segregate Republican and Democrat, persons of Irish descent and those of German descent, Protestant and Catholic. This argument was conclusively disposed of by the Supreme Court of the United States in *Plessy* v. *Ferguson*.[5] In delivering the opinion of the court, Mr. Justice Brown said:

> "The reply to all this is that every exercise of the police power must be reasonable and extend only to such laws as are enacted in good faith for the promotion of the public good and not for the annoyance or oppression of a particular class. So far then as a conflict with the Fourteenth Amendment is concerned, the case reduces itself to the question whether the statute of Louisiana is a reasonable regulation and with respect to this, there must necessarily be a large discretion on the part of the legislature. In determining the question of reasonableness, it is at liberty to act with reference to the established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable or more obnoxious to the Fourteenth Amendment than the Acts of Congress requiring separate schools for colored children in the District of Columbia, the constitutionality of which does not seem to have been questioned or the corresponding acts of State legislatures."

The municipal legislature of Atlanta enacted a segregation ordinance which was passed upon by the Supreme Court of Georgia in the case of *Carey* v. *City of Atlanta*.[6] This ordinance, like the Baltimore ordinance, failed to contain any saving clause in protection of vested rights acquired before the passage of the ordinance. The

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[4] Note 1, *supra*.

[5] Plessy v. Ferguson, 163 U. S. 537 (1895).

[6] Note 1, *supra*.

Georgia court held that the ordinance destroyed the right of the individual to acquire, enjoy and dispose of his property, and that it was void, as being in controvention of the due process clause of the Federal Constitution. There is nothing in the Louisville ordinance[7] which takes away from any person the right to acquire property anywhere in the city; but the ordinance does prohibit any colored person from occupying as a residence a building in any block in which the greater part of the houses are occupied by white persons and *vice versa;* however, persons owning or occupying property at the passage of the ordinance are in no way affected.

If it be conceded that the right of alienation is a vested right which cannot be taken away altogether by legislation, still such is not the effect of the Louisville ordinance. An indirect restriction upon the right of alienation resulting from the denial of the probability of alienation to certain classes of purchasers cannot be held to be a complete destruction of the power to alienate or deprivation of a vested right, violative of the constitutional guaranties. The principle is well settled that reasonable restraints upon the use of private property and upon the liberty to contract do not constitute a deprivation of "life, liberty or property without due process of law" within the meaning of the Fourteenth Amendment.[8]

It was argued that the ordinance violated the Fourteenth Amendment because it prevented the residence of negroes in more desirable portions of the city. It is hard to see, however, how this could be construed to be a denial of the equal protection of the laws. For the enforced separation of the races alone is not a discrimination or denial of the constitutional guaranty.[9] If such separation should result in the members of the colored race being restricted to residence in the less desirable portions of the city, they could render those portions more desirable through their own efforts as the white race has done.

The public policy of different States in respect to the separation of races has long been exhibited in legislation. By legislative mandate the races have been separated upon public conveyances, where by virtue of necessity they must otherwise have been associated;[10] by legislative mandate they have been separated in the public schools,[11] and the laws of a number of States prohibit mar-

[7] Note 2, *supra.*

[8] Mugler v. Kansas, 123 U. S. 623 (1887); Crowley v. Christensen, 137 U. S. 86 (1890).

[9] Note 5, *supra.*

[10] West Chester R. Co. v. Miles, 55 Pa. 209 (1866); Louisville R. Co. v. Mississippi, 133 U. S. 587 (1889); Ohio Valley R. Co. v. Lander, 104 Ky. 431 (1898); Morrison v. State, 116 Tenn. 534 (1905).

[11] People v. Quincy Board of Education, 101 Ill. 308 (1882); Hoker v. Town of Greenville, 130 N. C. 472 (1908); Berea College v. United States, 211 U. S. 50 (1908).

riages between white persons and negroes or persons of more than a stated proportion of African blood.[12] In view of the fact that this legislation is upheld partly in recognition of the peril to race integrity induced by mere propinquity, we see but little difference in the prevention by law of the association of white and colored pupils in the schools of the State and in the prevention of their living side by side in their homes.

G. H. K.

COPYRIGHT — INFRINGEMENT — ABRIDGMENT OF COPYRIGHTED BOOKS—The custom of "cramming" knowledge (predigested and made palatable by tutors) into students too indolent to condense for themselves the prescribed text-books, is widespread. Occasionally, the practice is vigorously condemned by the scholastic authorities, but it is unusual for the matter to meet with judicial disapproval, as occurred in a recent case,[1] in which the following interesting facts were involved: The defendant, a tutor, gave private instructions to students in Harvard University taking a course in economics under a professor who had copyrighted a book, "Principles of Economics," which was published by the plaintiff. The defendant prepared brief outlines of the text-book covering the subjects to be discussed at his next meeting with the students and allowed them to keep the outlines during the intervals between their weekly conferences. It was understood by the students that the outlines were to be returned at the end of the week and were not to be used except in preparation for the conferences. These were destroyed after they had been so used. The defendant also prepared other outlines for use, not at a particular conference dealing with a particular part of the book, but for tutoring in preparation for a final examination in one of the courses in economics. These were intended to outline all the subject matter covered in that course during a certain term, and were given to the students to be kept until immediately before the examination and then returned to the defendant. In some manner, these outlines got into the possession of the plaintiff, who thereupon brought a bill in equity for an injunction to restrain infringement of the copyright. The court held that both forms of outline,—which frequently quoted from the copyrighted book words and sentences likely to catch the attention and remain in the memory, and which treated in an abridged and paraphrased form the topics of the book, although the author's order and arrangement were not always followed,—were in violation of the Copyright Act of 1909,[2] which secures to the owner of a

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[12] Scott v. State, 39 Ga. 321 (1869); State v. Jackson, 80 Mo. 175 (1873).

[1] MacMillan Co. v. King, 223 Fed. Rep. 862 (1914).

[2] Copyright Act of March 4, 1909, Comp. St. 1913, §9519.